

DEC 19 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

LORD EBALO,

Plaintiff - Appellant,

v.

JOHN E. POTTER, Postmaster General;
MARVIN T. RUNYON, Postmaster General;
UNITED STATES POSTAL SERVICE,

Defendants - Appellees.

No. 02-16809

D.C. No. CV-01-04348-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted December 5, 2003**
San Francisco, California

Before: O'SCANNLAIN, HAWKINS, and FISHER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Lord Ebalo (“Ebalo”) appeals the denial of his Rule 60(b) motion for relief from judgment following dismissal of his Title VII employment discrimination claim, arguing that the district court abused its discretion by failing to do a full legal analysis of his “excusable neglect” claim under Pioneer v. Brunswick, 507 U.S. 380 (1993). Ebalo’s argument hinges on the claim that his attorney did not fully understand the enforceable nature of an order setting an initial case management conference, and that therefore, the attorney’s failure to attend the conference should be excused.

We will not ordinarily reverse for the failure to conduct a full-blown Pioneer analysis, especially where the claimed neglect is “misconstruction of a nonambiguous rule.” See Bateman v. United States Postal Service, 231 F.3d 1220, 1220, 1224 (9th Cir. 2000); Committee for Idaho’s High Desert v. Yost, 92 F.3d 814, 825 (9th Cir. 1996).

Ebalo’s claim is, essentially, that his attorney made a mistake with regard to the law governing procedures in the federal court for the Northern District of California. Because such an excuse cannot constitute “excusable neglect,” the district court did not abuse its discretion by failing to expressly employ the Pioneer test in its denial of relief.

AFFIRMED.